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DETENTION OF JUVENILES

A REVIEW OF THE PRACTICES IN MISSOURI

EXECUTIVE SUMMARY

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

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Executive Summary

Prepared by
Missouri Juvenile Justice Review Committee
December 1981

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INTRODUCTION

This executive summary is provided to cover the key findings resulting from the Missouri Juvenile Justice Review Committee's (MJJRC) review of "detention" of juveniles in Missouri. Based upon this review, MJJRC recommends several actions be taken. Many of these changes can occur within a relatively short period of time. Other recommendations will involve setting in motion the mechanisms which can provide additional information and options for more long-term improvements.

The executive summary includes a brief review of the basic philosophical assumptions applied in the MJJRC's review process. This is followed by a brief summary of key problem areas identified along with related recommendations. More detailed analysis of the information utilized in reaching these recommendations can be found in the body of the paper on "Detention of Juveniles, a Review of the Practices in Missouri."

I. ASSUMPTIONS

The recommendations included are based on an examination of the effects of existing statutes, Supreme Court Rules and local practices on the use of detention in Missouri. The resulting areas identified as needing change have a thread of continuity. The commonality in each case reflects the absence of a rationale which would lead to the implementation of the basic philosophy of the Juvenile Code.

The assumptions the MJJRC have relied on are really the central theme of the Juvenile Code. A portion of the Juvenile Code states:

"...each child coming within the jurisdiction of the Juvenile Court shall receive such care, guidance, and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should be given him by them." (R.S.Mo. 211.011)

This philosophy clearly identifies one role of the juvenile court as that of providing control of the child and for the best interests of the State. In the process of performing that role, the MJJRC strongly believes the role of providing for individualized needs of care and treatment for each child must be met at the same time. In fulfilling both roles of providing for the welfare of the child and the best interest of the State, the least restrictive setting possible must be used when the juvenile is removed from the home. In those cases where detention is found to be necessary, it is essential that the juvenile's rights are protected through the establishment and consistent application of proper detention practices.

II. IDENTIFIED PROBLEMS AND RECOMMENDATIONS

A. Jail Detention

A problem which continues to exist in Missouri is the detention of juveniles in adult jails and lockups that do not provide for separation of juveniles from adult offenders. Forty-six percent of the adult jails and lockups recently identified as being utilized for the detention of juveniles do not provide sight and sound separation of juveniles and adult of-

fenders. During July and August of this year, 66 juveniles were held in adult jails and lockups without sight and sound separation of juveniles and adult offenders. While various reasons and excuses are given for this practice, it is in direct conflict with Supreme Court Rule 111.03.b(4) and Section 211.151.1(4) R.S.Mo.

To clarify and strengthen current requirements related to the use of jail detention, the MJJRC recommends provisions be made to:

1. Require that sight and sound separation be absolute at all times and in all respects between juveniles and adults when a jail or other facility for the detention of adults is used for the detention of a juvenile. (Related Statute: 211.151.1(4); Related Supreme Court Rule: 111.03.b(4);
2. Provide that any person violating the sight and sound separation requirement be guilty of a Class A misdemeanor; and shall, upon conviction, be punished by a fine not to exceed one thousand dollars or imprisonment in the county jail not to exceed one year or by both fine and imprisonment; and
3. Require that when jail detention is utilized there shall be a judicial determination within 72 hours (excluding non-judicial days) that the child's habits or conduct constitutes a menace and it is necessary to utilize a jail for custody.

B. Clarification Of Detention Practices

The MJJRC strongly supports the need for Supreme Court Rules that provide uniform detention practices and protect the rights of juveniles held in detention. A problem which exists is that various juvenile courts apply these Rules inconsistently. Some courts try to apply the Rules to law violators, status offenders, and neglected/abused children. Other courts apply the Rules only to law violators and status offenders. This inconsistent application appears to result from more than the individual differences in philosophy of the various courts. The real problem is the lack of an adequate distinction in the different purposes met when "detention" is used for the three different categories of juveniles. This is further complicated by the inadequate distinction made in defining the difference between using a secure detention facility or a shelter care facility for detention. Mixing all categories of juveniles and the different purposes of detention under the same Rules does not work. This often creates an added work load for the court to meet procedural requirements which are inappropriate; and, in fact, provides for the use of overly restrictive settings, particularly for status offenders and abused/neglected children.

To provide for Rules which are clear and can be uniformly applied depending on the category of juveniles being served and the purpose of providing detention, the MJJRC recommends provisions be made to:

1. Delete the definition of "detention facility" under Supreme Court Rule 110.05.a(6);
2. Define "secure detention facility" as a place of temporary care for juveniles in judicial custody pending court disposition who require secure custody and includes facilities which are physically confining; and
3. Define "shelter care facility" as a place of temporary care for juveniles in judicial custody pending court disposition who are in need of care or protective custody and includes facilities which are physically unrestricting. (Related Statutes: 211.021 and 211.151 R.S.Mo.; Related Supreme Court Rules 110.05, 111.03, .04, .05, .06, .07, .09, and .10).

Further, to limit the inappropriate use of detention, the MJJRC recommends provisions be made to:

4. Provide that for those juveniles subject to the jurisdiction of the juvenile court pursuant to 211.031.1(2) an informal adjustment process be used whenever possible;

5. Prohibit the detention of juveniles in "secure detention facilities" who come under the court's jurisdiction through the provision of Section 211.031.1(1). (Related Statutes 211.141, .151, and .181 R.S.Mo.; Related Supreme Court Rules 111.02, .03, .04, .05, .06, and .07);
6. Provide that juveniles who come under the court's jurisdiction through the provisions of Section 211.031.1(2) not be held in "secure detention facilities" unless a non-secure facility has been attempted and been found to be insufficient or there is reason to believe the juvenile is in imminent danger and needs protection. (Related Statutes: 211.141, .151, and .181 R.S.Mo.; Related Supreme Court Rules 111.02, .03, .04, .05, .06, and .07);
7. Add the following additional criteria to limit when secure detention can be used:
 - a. Protect the juvenile
 - (1) Danger must be evident, or
 - (2) Danger must be immediate, or
 - (3) Danger must be specifically identified.
 - b. Protect the person of others
 - (1) Must be documented evidence of past violent behavior, or
 - (2) Presence of violence within present referral.
 - c. Protect the property of others
 - (1) Past behavior of repeated violations, or
 - (2) Type of property offense must be of a serious nature.
 - d. Because juvenile may flee jurisdiction
 - (1) Documented history of flight, or
 - (2) Present referral involves flight.
 - e. Because juvenile may be removed from jurisdiction
 - (1) Documented history of flight, or
 - (2) Present referral involves flight.
 - f. Because juvenile has no custodian or other suitable adult to provide care and supervision for him and return him to court when required, and at least one of the above criteria (a through e) exists.
 - (1) Absence is other than temporary, or
 - (2) Immediate presence of custodian is essential. (Related Statutes: 211.131 R.S.Mo.; Related Supreme Court Rule: 111.02.b(2)); and
8. Limit the amount of time between the filing of a petition and a hearing upon that petition to: a) a maximum of sixty (60) days for juveniles in physical custody unless good cause is shown and b) a maximum of ninety (90) days for juveniles not in physical custody unless good cause is shown. (Related Supreme Court Rule 111.07).

C. Inadequate Resources

In considering the possible places of detention, it is apparent the level of services available throughout the state varies significantly. Since detention services for juveniles are paid for primarily by local units of government, the wide variance in the tax revenues of different counties promotes a lack of uniformity in available services throughout the state. The current state aid to counties provides \$50 per month for each child in detention. In 1969, when this level of reimbursement was set, this amount was more meaningful. With inflation and increased costs, this amount of money provides little incentive for providing proper detention services. The MJJRC feels this rate should at least be equivalent to the amount provided for adults which is \$8 per day. Because of the lack of availability of ap-

propriate alternatives, the decision to place a juvenile in secure detention is sometimes made out of desperation rather than a choice of preference. Indeed this is one of the reasons given for the use of jail detention.

In order to promote a more uniform availability of resources for detention services and to promote the use of alternatives to secure detention, the MJJRC recommends provisions be made to:

1. Increase the base rate of state aid to counties for the care and maintenance of neglected or delinquent children to \$8 per day for each of these children. (Related Statute: 549.490 R.S.Mo.);
2. Amend Section 207.020.1(8) and (17) to provide the Division of Family Services with the mandate to accept for care and custody all children subject to the jurisdiction of the court under Section 211.031.1(1) and (2) R.S.Mo. Along with the mandate for additional services, the Division of Family Services should receive additional correlative funding; and
3. Provide a conditioned release as an option to detention for juveniles comparable to that operable in the adult system. This conditioned release would specify conditions to be met and provide the notification that if these conditions are not met the court may exercise more restrictive control. (Related Statute: 211.141; Related Supreme Court Rule 111.02(c)).

D. Lack Of Information, Planning And Coordination

Inconsistencies exist between the intent of existing statutes, Supreme Court Rules and what actually occurs in the process which leads to detention of juveniles in Missouri. The availability of adequate secure detention facilities and alternatives to secure detention vary drastically throughout the State. There is a dearth of comprehensive information about detention needs, the types of services which exist, and the circumstances involved in the process of placing a juvenile in detention. These are indications of the types of problems which result when there is a lack of planning and coordination. There is not wide public knowledge of resulting inconsistencies and gaps in service because there are few measures for accountability. While the statutes and Supreme Court Rules are in most cases adequate, there is no monitoring system to determine if actual practices comply. Clearly, sanctions are not identified and enforced.

In order to fill the void in comprehensive information which exists and to facilitate statewide coordination, uniformity, and minimum levels of service, the MJJRC recommends that provisions be made to:

1. Designate the Office of State Courts' Administrator to collect data on detention and protective custody cases from all forty-three (43) circuits on children which come under the jurisdiction of the juvenile court. Not only should this agency have the responsibility for collecting this data, but they should also have the authority to impose sanctions in order to assure the timely and accurate reporting of this data.
2. Assign to the Office of State Courts' Administrator the responsibility for planning and coordination to perform the following from a statewide perspective:
 - a. Insure that necessary information is available to examine:
 - (1) Existing needs for detention services,
 - (2) Existing detention services, and
 - (3) Constraints to providing services;
 - b. Establish a monitoring mechanism to identify and insure local practices conform to statutes and Supreme Court Rules;
 - c. Evaluate effectiveness and cost of existing alternatives to secure detention;

- d. Disseminate the above information on a statewide basis;
- e. Incorporate evaluative and other information in an ongoing planning process to alleviate the voids which exist in detention services;
- f. Establish minimum criteria for operation of secure detention facilities;
- g. Provide an incentive for the development of alternatives to secure detention in the form of shelter care facilities such as foster care, group homes, etc. This incentive could be provided by setting the reimbursement rate of state aid to counties for detention care proportionately higher when non-secure facilities are used than when secure detention facilities are used; and
- h. Pursue a goal of removing all juvenile offenders from all jail detention settings by 1985, and establishing regional secure detention facilities for juveniles as an alternative to jail detention.

E. Educational Services

In addition to the above areas of concern, the MJJRC strongly endorses the need for a statutory mandate that educational services be provided to children in secure detention and shelter care facilities. To this end, we are recommending legislation be passed following the concept of the original version of SB 7 proposed in the 81st Session of the General Assembly.

